

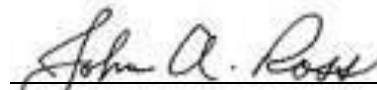
Under 28 U.S.C. § 2254(e)(2), a federal district court may not grant an evidentiary hearing unless “the applicant has failed to develop the factual basis of a claim in State court proceedings . . . [and] the claim relies on a factual predicate that could not have been previously discovered through the exercise of due diligence; and [] the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.” An evidentiary hearing is not necessary when the merits of petitioner's claims may be resolved based on the state court record. *McCann v. Armontrout*, 973 F.2d 655, 658-59 (8th Cir. 1992). At this

stage of the litigation, it appears that the filings of the Parties and the state court record contain sufficient facts to make an informed decision on the merits of petitioner's claims.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Evidentiary Hearing (Doc. 12) is **DENIED without prejudice.**

Dated this 1st day of February, 2016.

A handwritten signature in black ink, appearing to read "John A. Ross", is written over a horizontal line.

JOHN A. ROSS
UNITED STATES DISTRICT JUDGE